77-1251

Supreme Court, U. S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1977

LOUIE L. WAINWRIGHT,
Secretary, Department of
Offender Rehabilitation,
State of Florida, and
CHARLES J. SCRIVEN,
Chairman, Florida Parole
and Probation Commission,

Petitioners,

vs.

DAVID P. DEMAR,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT
STATE OF FLORIDA

SUPPLEMENTAL BRIEF OF PETITIONER
FILED PURSUANT TO SUPREME COURT RULE 24(5)

ROBERT L. SHEVIN
ATTORNEY GENERAL

CHARLES CORCES, JR.
Assistant Attorney General
412 E. Madison St., Ste. 800
Tampa, Florida 33602

Counsel for Petitioners

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PRELIMINARY STATEMENT

Petitioners file this supplemental brief pursuant to Supreme Court Rule 24(5) for the purpose of replying to the suggestion made by respondent in his brief that this cause is moot. In doing so petitioners concede that respondent's sentence expired on December 1, 1977.

ARGUMENT

While respondent may argue that this cause is moot as to him, it is not moot as to these petitioners. Petitioners continue to have a personal stake in the outcome of this controversy because they will suffer residual and adverse legal consequences by virtue of a judgment rendered by the Supreme Court of Florida which is predicated on an

erroneous interpretation of federal law. In *Sibron v. New York*, 392 U.S. 40 (1968), the Court held that even though a sentence had expired a case was not moot where there was no way for the defendant to have brought the case before the Court prior to expiration of the sentence and there was a "possibility" that as a result of the judgment the defendant would suffer adverse collateral legal consequences.

Petitioners recognize that in *Sibron* it was a criminal defendant seeking review in this Court, whereas here it is a parole commission and a warden. To view a parole commission and a warden as having less standing than a state prisoner is to create an invidious distinction without a difference. Petitioners could not have brought this

case to this Court before expiration of the sentence, and they will suffer repeated residual and collateral legal consequences as a result of the judgment.

What legal consequences? Petitioners are bound by the decisions of the Supreme Court of Florida however erroneous they may be. Compare: *Hoffman v. Jones*, 280 So.2d 431 (Fla. 1973); *Walker v. City of Birmingham*, 388 U.S. 307 (1967). As a result the commission must, unnecessarily, provide the full panoply of *Morrissey v. Brewer*, 408 U.S. 471 (1972), procedural rights to all future revocations of unexecuted grants of parole and petitioners will, in each instance, be forced to sacrifice their right to vindicate their claim, because the issue will repeat itself time and again yet evade review, *Nebraska Press Association v. Hugh Stuart*,

427 U.S. 539 (1976). The challenged action will be too short in duration to be fully litigated and petitioners, the complaining parties in this cause, will be subjected time and again to the same action, *Weinstein v. Bradford*, 423 U.S. 147 (1975).[1] If denied review petitioners must comply or run the risk of having sanctions imposed by the Florida Supreme Court or even be subject to civil damage suits. Compare: *O'Conner v. Donaldson*, 422 U.S. 563 (1975).

Weinstein v. Bradford, 423 U.S. 147 (1975); *Scott v. Kentucky Board of Parole*, 429 U.S. 60 (1976); *Regan,*

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1 "As disposition in each of the last three years demonstrate, the underlying issue is one that is capable of repetition, yet review is repeatedly evaded." *Scott v. Kentucky Board of Parole*, 429 U.S. 60, 63,64 - Stevens, J. dissenting.

Chairman of the New York Board of Parole v. Johnson, 419 U.S. 1015 (1974); *Scarpa v. United States Board of Parole*, 414 U.S. 809 (1973), are distinguishable. In each, when the cause was declared moot, the parties were left in their original position. Each involved an initial proceeding in federal court. In each, either the Court or a circuit court of appeals had the power to order the district court to consider the cause as mooted thus leaving the parties in their original position.

But, in the instant case, unless the Court grants certiorari, the judgment of the Supreme Court of Florida will stand, much to the detriment of petitioners.

Nevertheless, should this Court determine this cause be moot it is requested that the Court grant the writ and vacate or reverse the judgment in order that the judgment of the Supreme Court of Florida not be res judicata in future litigation, *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950); *Natural Milk Producers Association of Calivornia v. City and County of San Francisco*, 317 U.S. 423 (1943).

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL

CHARLES CORCES, JR.
Assistant Attorney General
412 East Madison Street
Suite 800
Tampa, Florida 33602

Counsel for Petitioners

CERTIFICATE OF SERVICE

I, CHARLES CORCES, JR., Counsel for Petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of , 1978, I served three copies of the Supplemental Brief of Petitioners on Philip J. Padovano, Esquire, Counsel for Respondent, 2950 First Avenue North, P. O. Box 12787, St. Petersburg, Florida 33733, by a duly addressed envelope with postage prepaid.

CHARLES CORCES, JR.
Assistant Attorney General

Of Counsel for Petitioners